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4 USA, Plaintiff,
5 v.
6 HOLMES, Defendant.
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 Case No. 10-cr-00108-SI-1

13 **ORDER GRANTING STEPHEN
14 RICHARD HOLMES'S MOTION FOR A
15 CERTIFICATE OF APPEALABILITY**

16 Re: Dkt. No. 39

17 On November 28, 2016, the Court denied Stephen Richard Holmes's motion to vacate, set
18 aside or correct his sentence pursuant to 28 U.S.C. § 2255. Holmes now seeks a certificate of
19 appealability to challenge the determination that federal unarmed bank robbery, in violation of 18
20 U.S.C. § 2113(a), remains a "crime of violence" under U.S.S.G § 4B1.2(a) notwithstanding the
21 Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). Recently, another
22 district court in the Ninth Circuit held that unarmed bank robbery is not a crime of violence. *See*
Doriety v. United States, No. 16-924 (W.D. Wash. Nov. 10, 2016). In light of differing judicial
opinions on this issue, Holmes has demonstrated that "reasonable jurists would find the district
court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S.
473, 484 (2000). Accordingly, the Court GRANTS defendant's motion for a certificate of
appealability on this issue.

23 This order resolves Dkt. No. 39.

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25 **IT IS SO ORDERED.**

26 Dated: November 29, 2016

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SUSAN ILLSTON
United States District Judge